

STATE OF MICHIGAN
COURT OF APPEALS

DENISE MATTEOCCI,

Plaintiff-Appellee,

v

OAKWOOD HEALTHCARE, INC.,

Defendant-Appellant.

UNPUBLISHED

January 12, 2006

No. 263812

Wayne Circuit Court

LC No. 01-437310-CK

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant, Oakwood Healthcare, Inc., appeals as of right the trial court order granting its motion to dismiss all claims brought by plaintiff, Denise Matteocci, with prejudice, but referring plaintiff's wrongful discharge claim to final and binding arbitration. Because the trial court was not empowered to refer plaintiff's claims to arbitration, we reverse and vacate the trial court's order referring the matter to arbitration, and remand to the trial court with instructions to dismiss plaintiff's complaint in its entirety.

Plaintiff worked as a registered nurse at Oakwood Hospital. Defendant terminated plaintiff's employment in September 2004 following an incident involving a prescription for a controlled substance, namely Vicodin ES. Post termination, plaintiff filed a complaint in circuit court alleging wrongful discharge. Plaintiff asserted that defendant terminated her employment without just cause, contrary to a just-cause provision contained in defendant's employee handbook. Defendant filed a motion to dismiss plaintiff's complaint arguing that plaintiff was barred from bringing a wrongful discharge claim in circuit court because any just-cause employment relationship she enjoyed with defendant was conditioned on her compliance with defendant's internal problem resolution procedure which culminated in arbitration.

Defendant asserted that plaintiff had not complied with the five-step procedure which was the sole and exclusive procedure for determining the just-cause issue, and as such, her complaint should be dismissed with prejudice. The trial court dismissed plaintiff's complaint in the circuit court, but after finding that plaintiff had satisfied defendant's internal procedural prerequisites to arbitration, ordered the parties to submit the matter to arbitration. It is from this order that defendant appeals stating explicitly that it does not appeal the dismissal of plaintiff's wrongful discharge claims in the circuit court, but only the portion of the order mandating that the parties submit to arbitration.

Defendant asserts that the trial court erred when it referred the matter to arbitration based on procedural findings made outside the scope of its authority that were both contrary to the facts and Michigan law. Defendant argues specifically that because plaintiff voluntarily withdrew from the Problem Resolution Procedure she had no further recourse, and thus the trial court erred when it referred the matter to arbitration. We review a trial court's decision on a motion to dismiss de novo. *Cork v Applebee's*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

The parties agree that the just-cause employment relationship was based on defendant's employee handbook. The handbook defines the employment relationship as follows, in pertinent part:

OHS will not suspend without pay or discharge any employee without just cause. Any complaint by an employee that they have been suspended or discharged without just cause will be processed in accordance with the Problem Resolution Procedure and shall, if not resolved at an earlier stage, be subject to the final and binding decision of an impartial arbitrator as set forth in the Problem Resolution Procedure, which is the exclusive procedure for determining the just cause issue.

Plaintiff admitted that she received the most recent version of the employee handbook, was aware of the problem resolution procedure, and admitted that she had used the procedure at least twice in the past.

Our review of the record reveals that, after learning of her termination, plaintiff contacted her immediate supervisor to initiate the problem resolution process at Step 1. Plaintiff requested, filled out, and then submitted a Problem Resolution Form to defendant's human resources department thereby completing Step 1 of the procedure. Defendant's human resources staff then contacted plaintiff to schedule a meeting in accordance with Step 2 of the procedure. Plaintiff arrived for the Step 2 meeting with her attorney. Defendant informed plaintiff that pursuant to the Problem Resolution Procedure, she was not permitted to have an attorney present during Steps 1 through 4 of the internal process.¹ Plaintiff and her attorney left without participating in the Step 2 meeting.

Subsequently, plaintiff contacted defendant about Step 3. After the human resources manager explained that there was nothing he could do in the situation, plaintiff contacted defendant's executive vice president of human resources who scheduled a Step 4 appointment. Plaintiff did not show up for the Step 4 meeting, did not attempt to pursue the Problem Resolution Procedure any further, and instead elected to file a complaint in the circuit court. In her deposition testimony, plaintiff admitted that defendant never prevented her from continuing within the Problem Resolution Procedure.

¹ The Problem Resolution Procedure specifically provides that the process "is internal and, as such, the attendance of an employee representative or advocate is not permitted at Steps 1-4." Defendant admits in its brief on appeal that attorneys are permitted to attend at Step 5, which is final and binding arbitration.

Michigan law presumes that an employment relationship is at will unless there is clear evidence to the contrary. See generally, *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 637-638; 473 NW2d 268 (1991). In this case, the parties agree that the employee handbook defined the employment relationship between plaintiff and defendant. A plain reading of the applicable portion of the handbook reveals that defendant agreed not to “suspend without pay or discharge any employee without just cause.” On the obverse, plaintiff agreed that “[a]ny complaint by [her] that [she has] been suspended or discharged without just cause will be processed in accordance with the Problem Resolution Procedure and shall, if not resolved at an earlier stage, be subject to the final and binding decision of an impartial arbitrator as set forth in the Problem Resolution Procedure, which is the exclusive procedure for determining the just cause issue.”

After carefully reviewing the facts of the case, it appears plain to us that plaintiff seeks to take advantage of her status as a just-cause employee while at the same time ignoring her corresponding obligation to proceed with her complaint in accordance with the Problem Resolution Procedure. This Court has previously addressed this exact issue, and counsels us as follows:

If the plaintiff is entitled to rely on the handbook to support his claim that he is a just-cause employee rather than an at-will employee, then he must also be bound by the other terms of the just-cause policy in the handbook, i.e., that any claim of termination without just cause must be made by filing a grievance and a request for arbitration. Plaintiff may not claim only the benefits of a stated policy while rejecting the concomitant obligation to file a grievance and request arbitration in order to enforce those benefits.

Having failed to pursue his remedy as provided by the company policy, plaintiff cannot now pursue in circuit court a wrongful discharge claim based on that policy. [*Zeniuk v RKA Inc*, 189 Mich App 33, 37-38; 472 NW2d 23 (1991).]

Here, plaintiff admits that she did not take part in the Step 2 meeting because her attorney was not allowed to be present, and, plaintiff admits in her brief on appeal that she did not attend the scheduled Step 4 meeting because she “recogniz[ed] the futility of the grievance process under teh [sic] circumstances.” Whatever plaintiff’s reasons were for not attending scheduled meetings in accordance with the Problem Resolution Procedure, it is clear that she chose not to take the steps required in the Problem Resolution Procedure on her own volition. Additionally, plaintiff admitted that defendant never prevented her from continuing within the Problem Resolution Procedure. Parallel to the circumstances in *Zeniuk*, plaintiff attempted to reap the benefits of just-cause employment while at the same time failing to pursue her remedy as clearly outlined in the employee handbook. Hence, plaintiff could not seek redress in the circuit court. Because plaintiff’s only remedy was to abide by the policy set forth in the employment manual, the trial court was not empowered to grant any relief to plaintiff including referring the matter to arbitration.

Reversed, vacated, and remanded for further steps consistent with this opinion. We do

not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis